

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 GREGORY CLOUTIER, et al.,

No. C-06-3893 MMC

12 Plaintiffs,

**ORDER DIRECTING PARTIES TO FILE  
SUPPLEMENTAL BRIEFING RE:  
QUALIFIED IMMUNITY; CONTINUING  
HEARING ON MOTIONS FOR  
SUMMARY JUDGMENT**

13 v.

14 COUNTY OF CONTRA COSTA, et al.,

15 Defendants.

16 \_\_\_\_\_ /

17  
18 Before the Court are five motions for summary judgment, filed June 22, 2007 on  
19 behalf of, respectively, defendants County of Contra Costa ("County"), Sheriff Warren Rupf  
20 ("Rupf"), Sheriff's Deputy Matt Foley ("Foley"), Sheriff's Deputy Erik Steele ("Steele"), and  
21 licensed mental health specialist Margaret Blush ("Blush"). Plaintiffs have filed a  
22 consolidated opposition to four of the five motions; plaintiffs state they do not oppose  
23 Rupf's motion.

24 In their respective motions for summary judgment, Blush, Foley, and Steele raised  
25 no issue with respect to qualified immunity. Each such defendant, however, makes a  
26 qualified immunity argument in their respective replies.<sup>1</sup> Ordinarily, the Court would not  
27 address an argument raised for the first time in a reply. See, e.g., Lentini v. California

28  
<sup>1</sup> The argument by Foley and Steele is contained in a consolidated reply filed by the  
County, Rupf, Foley and Steel. Blush filed a separate reply.

1     Center for the Arts, Escondido, 370 F.3d 837, 843 n. 6 (9th Cir. 2004) (refusing to consider  
 2 argument raised for first time in reply because opposing party had no opportunity to  
 3 respond). With respect to qualified immunity, however, the Supreme Court has “stressed  
 4 the importance of resolving [such] immunity questions at the earliest possible stage in  
 5 litigation.” See Saucier v. Katz, 533 U.S. 194, 201 (2001).

6         Consequently, the Court will consider such arguments and will afford plaintiffs an  
 7 opportunity to respond. Because the first part of the test for qualified immunity overlaps  
 8 with the merits of plaintiffs’ § 1983 claims, see Saucier, 533 U.S. at 201 (holding “initial  
 9 inquiry” is whether “the facts alleged show the officer’s conduct violated a constitutional  
 10 right”), and the parties have had an adequate opportunity to address the merits of such  
 11 claims, the parties shall limit their supplemental briefing to the second part of the test for  
 12 qualified immunity, specifically, “whether the right was clearly established” so that “it would  
 13 be clear to a reasonable officer that his conduct was unlawful in the situation he  
 14 confronted.” See id. at 201-202.

15         Accordingly, no later than August 3, 2007, plaintiffs may file a consolidated  
 16 supplemental opposition, of no more than eight pages in length, addressing the qualified  
 17 immunity arguments raised by Blush, Foley, and Steele. No later than August 10, 2007,  
 18 Foley and Steele may file a consolidated supplemental reply of no more than four pages in  
 19 length, and Blush may file a supplemental reply of no more than four pages in length. In  
 20 light of the need for additional briefing, the August 3, 2007 hearing on the motions for  
 21 summary judgment, as well as the August 3, 2007 case management conference, are  
 22 hereby CONTINUED to August 17, 2007 at 9:00 a.m.

23           **IT IS SO ORDERED.**

24         Dated: July 27, 2007



MAXINE M. CHESNEY  
United States District Judge

26  
27  
28